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Tenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 139th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 April 1993, at 10 a.m.

Chairman: Mr. VOYAME

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Canada

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.139/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

First supplementary report of Canada (CAT/C/17/Add.5)

1. At the invitation of the Chairman, Mr. Shannon, Mr. Dubois, Mr. Kessel, Ms. Weiser, Mr. Low and Mr. Deslauriers (Canada) took seats at the Committee table.

2. The CHAIRMAN welcomed the members of the Canadian delegation. He appreciated the opportunity for the Committee to engage in a second dialogue with the representatives of the Canadian Government. He invited the delegation to present orally the first supplementary report of Canada and explained that, in accordance with the Committee's practice, the State party's delegation would be able to reply at a subsequent meeting to any questions Committee members might ask.

3. Mr. SHANNON (Canada) said that, in compliance with its obligations under the Convention, his Government had thus far submitted two reports which showed the amendments made to Canadian law for the purpose of bringing it into line with the provisions of the Convention. In its second, supplementary report, his Government replied to specific questions raised by Committee members during the presentation of the initial report. At the current session, his delegation would endeavour to describe the measures taken recently at the national and international levels to combat torture, the excessive use of force and the use of cruel, inhuman or degrading treatment or punishment.

4. The Federal Government, the provincial governments and the two territorial administrations had joined forces to prepare Canada's first supplementary report, a process which had, moreover, enabled the various authorities to assess the extent to which the Convention had been implemented in their respective areas of competence. The intergovernmental committee of senior officials on human rights had also contributed significantly to the preparation of the report, just as it was cooperating in the implementation of human rights instruments.

5. Canada had for several years actively endorsed the adoption of a resolution under which the activities of all the human rights treaty bodies, in particular the Committee against Torture and the Committee on the Elimination of Racial Discrimination, would be funded from the United Nations regular budget, on the same basis as for the five other bodies already funded in that manner. His delegation therefore welcomed the consensus decision adopted by the General Assembly at its forty-seventh session. The proposed methods of financing had thus been approved, thereby providing the Committee with the financial resources necessary to pursue its work in an independent and effective fashion.

6. Also in connection with the Committee's work, his Government had been a very active participant in the first inter-sessional working group on the formulation of a draft optional protocol to the Convention against Torture. Adoption of such a protocol would, in Canada's view, be a practical step

towards the prevention of torture through to an international system for monitoring prison conditions. His Government earnestly hoped that States would arrive at a consensus on that question. It was also a regular contributor to the United Nations Voluntary Fund for Victims of Torture, with a contribution over the past five years of 147,000 Canadian dollars.

7. Canadian prisons conformed to national and international standards relating to respect for the rights of the individual. In addition, prison authorities took account of the specific needs of certain categories of detainees. It was in that connection that a working group on female prisoners in federal institutions had been mandated to investigate prison conditions and to propose improvements. In response to the group's recommendations, four new regional centres and a rehabilitation centre for indigenous women were being built, and the only federal prison for women, located in Kingston (Ontario), would soon close it doors, the rationale being that in a country as vast as Canada a single federal prison led to a situation which in fact represented excessively severe punishment. Moreover, that institution had been contrary to the aims of rehabilitation: the social rehabilitation of prisoners depended, at least partially, on the possibility of living close to friends and family members.

8. The same working group had also recommended the construction of a rehabilitation centre for indigenous women; its recommendation had been based on the conclusions of a study indicating that an excessively large number of indigenous people were incarcerated and that indigenous women prisoners had their own particular needs. Thus, indigenous values and rituals would be respected and contacts with the elderly and children, and with nature, would be maintained. The members of the indigenous community had helped plan facilities at the new centre and would continue to play a key role in its operation and in the formulation of its programme of activities. Construction was scheduled for completion in September 1994. In the meantime, the Federal Government would be improving conditions of detention at Kingston prison, including facilitating visits from family members and long-distance telephone conversations; improving psychological consultation services; providing a full-time indigenous counsellor; setting up therapy services for victims of sexual aggression; hiring a liaison agent for black women; and improving treatments for drug addicts.

9. In Quebec, a major reform of the police services, launched in 1988, had resulted in the adoption of a new police code of ethics, which had entered into force on 1 September 1990. The aim was to ensure better protection for citizens by encouraging police officers to develop conscientiousness in the performance of their duties and respect for the rights and freedoms of the individual. That reform had also led to the creation of two new institutions to ensure compliance with the standards laid down in the code: thus the commissioner for police ethics was authorized to receive complaints from citizens who considered that they had suffered from police conduct, and the committee on police ethics had jurisdiction to dispose of any case brought by the commissioner.

10. In the field of law enforcement, the authorities of the province of Ontario, in collaboration with police associations, specialists in the use of force, and instructors, had developed new training standards based on four

fundamental principles: training in the use of force must be provided throughout the career of police services employees; an overview of the various methods for using force must be taught; police must be taught how to use good judgement in order to enable them to choose rationally among the various methods; and multiracial relations, communication and personal exchanges formed a crucial part of the training in methods and strategies applicable in the case of a serious confrontation. In order to apply those principles, the Ontario police services had tripled the number of training hours for new recruits. In addition, police officers were provided with ongoing training in the use of verbal communication to enable them to confront potentially explosive situations; they were also trained in the use of neutralizing sprays; and education in multiracial relations formed a basic part of training in the use of force. The effectiveness of those new measures was being assessed and the techniques developed would be increasingly applied throughout the country.

11. His Government had already referred to some of the accomplishments of the Canadian Centre for Victims of Torture. Established in 1977, the Centre provided medical, legal and social services to refugees who had been victims of torture in other countries and to members of their families. The Government partially funded several of the Centre's activities, including the reintegration services programme, which offered reception, orientation and advisory services and gave the refugees the chance to join mutual support groups. The Centre also offered a special English course designed expressly for the individuals concerned. As recognized in article 1 of the Convention, torture was often inflicted for the purpose of obtaining information or confessions. The Centre's programme had therefore been designed to include an awareness of how questions were asked and the manner in which various subjects were approached.

12. His delegation expressed its appreciation to the Committee members for their excellent work. Monitoring of action taken by States parties constituted an important guarantee, as well as significant progress towards eliminating all practices that were unacceptable in a civilized world.

13. Mr. EL IBRASHI thanked the Canadian Government for its clear and detailed report (CAT/C/17/Add.5) and the Canadian delegation for its oral presentation. Since he had not been a Committee member at the time the Canadian Government had presented its initial report, some of the questions he wished to ask might have already been dealt with.

14. He noted that, according to paragraph 27 of the report, the Criminal Code had been amended in order to create a specific offence of torture; he also noted that thus far Canadian law provided no concise definition of torture as understood under the Convention, and he questioned that apparent gap. He further noted that, according to paragraphs 7 and 9 of the report, under the Canadian system there was a clear and balanced sharing of powers between the federal and provincial authorities; yet he wondered if that system did not actually give rise to certain difficulties in the practical enforcement of the law. In that connection, he cited paragraph 21 of the report, which indicated that there could be certain difficulties in establishing statistical records because of the division of power between the federal and provincial authorities.

15. Turning to paragraph 15 of the report, in which it was stated that "Conduct which amounts to torture under the Convention may also constitute a crime against humanity or a war crime, depending on the circumstances", he wished to known whether, in fact and for the purpose of imposing penalties, torture was considered simply as an offence under the Criminal Code or as an additional offence constituting a crime against humanity or a war crime. He noted also that, as mentioned in paragraph 25, Canada had entered into treaties relating to mutual legal assistance with certain countries: what was the situation regarding countries with which Canada had not concluded that type of agreement?

16. With regard to the implementation of article 13 of the Convention, it was clear from paragraph 34 of the report that citizens were better protected than in the past against any abuses committed by officers of the Royal Canadian Mounted Police in the line of their duties. He recalled, however, that paragraph 27 of Canada's initial report (CAT/C/5/Add.15) stated that "the person may initiate criminal charges and proceedings before a justice under S.455 of the Criminal Code ...". He therefore wished to know if the victim of an abuse of power by the authorities could still bring a complaint before the court. With regard to paragraph 38 of the supplementary report, he asked on what basis a victim could be compensated when the alleged perpetrator was acquitted owing to lack of evidence. Finally, he wished to know if the Canadian delegation was familiar with a report of the Canadian Council for Refugees relating to the expulsion, return and extradition of individuals from Canadian territory.

17. The CHAIRMAN said that he wished first to make a purely procedural remark. He noted that the report had been duly prepared in accordance with the Committee's guidelines and that it dealt systematically and specifically with the implementation of each article of the Convention. Nevertheless, the information provided in certain sections of the document did not really correspond to what the Committee expected from States parties. To mention but one example in connection with article 10 of the Convention, paragraphs 64 to 66 described the jurisdiction of the police and the Solicitor General of New Brunswick; that bore little relation to the provisions of article 10, which dealt with the training of civil and military law enforcement personnel. It was to be hoped that the Canadian Government would bear that distinction in mind in the future.

18. Mr. El Ibrashi had stressed that Canadian law did not contain a definition of torture. In that connection, he (the Chairman) did not consider it essential for States parties to incorporate in their domestic legislation a definition of torture if, as to substance, the term "torture" was understood within the meaning of article 1 of the Convention. Nevertheless, Committee members might wish to discuss that matter further.

19. With regard to issues of substance, he would appreciate an explanation of the precise meaning of the last phrase in paragraph 15, which related to article 2 of the Convention. With regard to articles 5 and 6 of the Convention, the Canadian Government had given no indication either in its initial report or in its supplementary report of what legal measures had been taken to provide Canadian judges with universal jurisdiction in the matter of torture, in view of the fact that the jurisdictions were divided between those

of the Federal Government and those of the provinces. It should also be emphasized, in respect of mutual legal assistance, that in accordance with the Convention such assistance was due to all States parties to the Convention regardless of any agreements concluded on that question. Lastly, with regard to the implementation of article 10, the report indicated that the members of police forces were duly informed of the provisions of that instrument; however, there was no indication that military, medical or prison personnel were also so informed.

20. With regard to issues of fact, it was true that allegations of torture in Canada were extremely rare, not to say non-existent. Nevertheless, Amnesty International had reported the case of two immigrants of Chinese origin who had allegedly been mistreated by Vancouver police in February 1992 and had brought an action for compensation for injury. In that connection, he wished to know if the proceedings had been concluded and if the inquiry carried out had been genuinely impartial. The other question of fact concerned the case of the Mohawk Indians who, in 1990, had allegedly been mistreated by the Quebec Sûreté. According to the information received, four of the cases were still pending before the Quebec courts and the commissioner for police ethics was still considering a fifth case. The Canadian delegation might wish to inform the Committee of the results of the investigations and specify whether the Quebec Sûreté could be considered as competent to carry out an impartial and independent inquiry, as required under articles 12 and 13 of the Convention.

21. Mr. SHANNON (Canada) said that he was familiar with the case of the two Chinese immigrants: the proceedings were continuing and his delegation would keep the Committee informed.

22. As to the allegations made by Amnesty International, he said that in 1990 he had personally brought the issue to the attention of the Subcommission on Prevention of Discrimination and Protection of Minorities, and the cooperation established at that time between the Federal Government and the provincial authorities had been cited as exemplary by the Chairman of the Subcommission. The consultations had helped to settle the dispute peacefully with the assistance of all the parties concerned. In addition, the amendments to Quebec law designed to improve protection for citizens who had been victims of abuse of authority by the police had contributed to more effective implementation of the Convention.

23. Mr. SORENSEN, referring to the implementation of article 3 of the Convention, as presented in paragraphs 17, 18 and 19 of the report (CAT/C/17/Add.5), said that the Canadian Government was to be congratulated on its refugee policy and on the hospitality it extended to refugees when, in other countries, many refugees were unceremoniously turned back at the frontier. The fact remained, however, that according to information from the Canadian Council of Churches, some refugees who had been tortured had been returned to their countries. It would be helpful if the Canadian delegation could provide further details on that matter.

24. In connection with the implementation of article 10 of the Convention, he was pleased to note that training of police officers constituted an important part of the efforts to prevent ill-treatment. He wished to know if special

training was provided for frontier police; they were often confronted with difficult situations in dealing with refugees who in many cases did not understand the languages of the country and had no supporting network. Furthermore, given that the refugees entering Canada were generally dispersed throughout the country, he wondered if all Canadian medical personnel received training in treating torture victims. In that connection, the Canadian delegation might inform the Committee whether it was familiar with the correspondence between Mr. Robert Hage, Director of the Legal Operations Division of the Canadian Department of External Affairs and International Trade, and Mr. Ken Agar-Newman, a male nurse; that correspondence indicated that, in the opinion of the Canadian Government, training in the area of torture was intended only for medical personnel in prisons. In the opinion of the speaker, that was a particularly restrictive interpretation of the provisions of article 10 of the Convention.

25. Lastly, in connection with the implementation of article 14 of the Convention, he would like to know whether a victim of torture in a province lacking a specialized treatment centre could be treated at a centre in another province.

26. Mr. BEN AMMAR said that he was convinced of the Canadian Government's continuing concern for the protection of human rights and of the physical and moral integrity of the individual. He nevertheless regretted that, like the initial report, the supplementary report (CAT/C/17/Add.5) failed to include statistics on complaints from Canadian citizens about cruel, inhuman or degrading treatment. Furthermore, while paragraph 2 of the supplementary report cited criminal law and procedure in criminal matters as examples of matters which fell under federal jurisdiction, paragraph 21 stated that prosecution of criminal offences fell within provincial jurisdiction. What exactly was the situation?

27. With regard to the implementation of article 8 of the Convention, he referred to paragraph 17 of the report, which stated that the Supreme Court of Canada had determined that the return of two fugitives to the United States, where the death penalty had not been abolished, had not contravened the Canadian Charter of Rights and Freedoms. While it could be maintained, in the case in point, that in the United States the persons concerned would be dealt with by a legal system supported by solid guarantees and established by a democratic Government, that was not the case in certain other countries, where prisoners awaited execution of their sentences in conditions which could certainly be said to resemble the cruel, inhuman or degrading treatment covered by the Convention. It should be kept in mind that under the Convention, no State party had the right to extradite a person to another State where there were serious reasons to believe that he might be subjected to torture.

28. With regard to the implementation of article 10 of the Convention, he hoped that the Committee could obtain a copy of the courses offered to recruits of the Royal Canadian Mounted Police and employees of the Correctional Service of Canada. In that connection, he wished to pay tribute to the Canadian Government for the effectiveness of its efforts to disseminate human rights principles both in Canada and in other countries.

29. Lastly, he would appreciate information on the Public Complaints Commission. What action had been taken on the conclusions of the Commission, which had held five hearings since January 1990? He had noted with interest the adoption of a police code of ethics and would appreciate more details on the mandate of the commissioner for police ethics.

30. Mr. LORENZO said he also wished to congratulate the Canadian delegation on the very fine report (CAT/C/17/Add.5) it had presented to the Committee. Paragraph 11 of the report stated that the disciplining of members of the Royal Canadian Mounted Police (RCMP), whether they were acting in a federal or provincial capacity, was an exclusive federal responsibility. He wondered if that was also the case for criminal penalties: could a RCMP officer who had violated the provisions of the Convention against Torture be judged only by a federal court?

31. He asked a second question, concerning paragraph 148 of the report, which stated that "An interim policy will significantly restrict the use of corporal punishment of foster children under the protective care of the Department". That policy stipulated "the limited circumstances in which corporal punishment may be used ... and requires foster parents to receive training in alternative disciplinary methods". In the words of article 16 of the Convention, "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by ... a public official or other person acting in an official capacity". Was there not a contradiction in that case? In that connection, it was important to stress once again the importance of education, in view of the fact that parents who subjected their children to corporal punishment might be capable of stepping across the dangerous boundary towards the use and justification of acts of torture. It would thus be appropriate to clarify the meaning of article 16 and to indicate more clearly what were the "other" acts of cruel, inhuman or degrading treatment or punishment which States parties must prohibit on their territories. He would like to know whether the practice of corporal punishment continued in Canada and, if so, whether it was legal.

32. Mr. MIKHAILOV thanked the Canadian delegation for its report, which was both complete and precise, and described measures taken by the Government not only at the federal level but also at the provincial level. He referred to paragraph 6 of the report, which stated that in Canada international treaty law was not automatically part of the law of the land. Were there any divergences between the provisions of the Convention and those of Canadian domestic law, whether federal or provincial? He quoted from paragraph 15 of the report, which stated: "... section 7(3.71) of the Criminal Code ... makes war crimes and crimes against humanity a criminal offence. Conduct which amounts to torture under the Convention may also constitute a crime against humanity or a war crime, depending on the circumstances, and therefore may also be punishable under this section of the Criminal Code". In his view, there was a great difference between war crimes and crimes against humanity, on the one hand, and acts of torture as covered by the Convention, on the other.

33. He referred next to paragraph 21 of the report, which indicated that prosecution of criminal offences fell within provincial jurisdiction.

According to paragraph 13, under the Constitution Act of 1867, the Federal Government was authorized to establish and administer penitentiaries housing persons sentenced to prison terms of two years or longer, while the provinces were responsible for the administration of correctional institutions housing persons sentenced to prison terms of less than two years. The offences referred to in the Convention against Torture belonged under which jurisdiction?

34. Lastly, paragraph 27 of the report indicated that, in response to Canada's ratification of the Convention against Torture and the resulting amendments to the Criminal Code, a session on torture had been introduced in the course on Criminal Law. Was that a university course for law students or a seminar for judges already officiating?

35. Mr. SHANNON (Canada), returning to the situation of refugees in his country, assured the Committee that there had been no ill-treatment of refugees. No complaint had ever been brought in that connection. The Canadian courts had simply received complaints from individuals who considered that there had been some delay in examining their case, which was logical in view of the enormous number of requests for asylum submitted in 1990 and 1991. His Government was following the issue closely, but it could in any case be stated that the treatment of refugees in Canada did not give rise to any violation of the Convention against Torture.

36. Mr. BURNS, referring to the Chairman's statement that it was not necessary to give a precise definition of acts of torture under the Convention, said that he was totally opposed to that view and hoped that the Committee members could discuss the issue. In his opinion, the fact that some countries failed to provide in their reports statistics on cases of torture or of cruel, inhuman or degrading treatment was directly linked to the absence of a definition of torture. Since acts of torture were not precisely defined, those acts were integrated within overall crime statistics.

37. Mr. EL IBRASHI, Mr. DIPANDA MOUELLE, Mr. SORENSEN and Mr. LORENZO considered that the issue should be discussed by the Committee during the current session.

38. It was so decided.

The public meeting rose at 11.40 a.m.

The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.139/Add.1.